IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 788 OF 1983
To
FIRST APPEAL NO. 790 OF 1983

With

CROSS OBJECTION NO. 15 OF 2007
To
CROSS OBJECTION NO. 17 OF 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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UNITED INDIA INSURANCE COMPANY LIMITED - Appellant(s)
Versus
ANJULABEN A. SHAH & ORS. - Respondent(s)

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Appearance :
Shri K.H. Baxi for Appellant(s).
Shri Sarthak Vyas for the Claimants .

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/04/2007

COMMON ORAL JUDGMENT

The Insurance Company, namely, United India Insurance Company Limited, being aggrieved by the judgement and award dated 31st January, 1983 passed in Motor Accident Claims Petition No.84 of 1979 (Virchand Tokarsibhai Doshi & Anr. vs. Nabibhai Mohmedbhai Mansuri & eight others), Motor Accident Claims Petition No.85 of 1979 (Anjulaben Amritlal Shah & four others vs. Nabibhai Mohmedbhai & eight others) and Motor Accident Claims Petition No.86 of 1979 (Ushaben Mahendrabhai Shah vs. Nabibhai Mohmedbhai & eight others), have filed First Appeal Nos.788 of 1983, 789 of 1983 and 790 of 1983. Each of the claimants, respondents, have filed Cross Objections. Cross Objection No.15 of 2007 has been filed on behalf of Anjulaben Amritlal Shah in First Appeal No.788 of 1983, Cross Objection No.17 of 2007 has been filed by Ushaben Mahendrabhai Shah in First Appeal No.790 of 1983, while Cross Objection No. 16 of 2007 has been filed by Virchand Tokershi Doshi in First Appeal No.789 of 1983.

2. On one side, the Insurance Company is submitting that in view of breach of the conditions of the policy and statutory breach of the conditions by the owner and the driver of the vehicle, the Insurance Company is not answerable to the claim amount, each of the claimants is claiming enhancement in the awarded amount.

3. The short facts necessary for disposal of the present appeals are that on 22nd April, 1979, Meenaben - daughter of the claimant, Virchand Doshi, Sureshkumar Shah - son of Anjulaben Amrutlal Shah (husband of Bharatiben Shah and father of Bhavin, Niraj and Nilay) along with number of others were travelling in a station wagon. The station wagon was being driven by respondent No.1, i.e. Nabibhai

Mohmedbhai Mansuri. The station wagon bearing Registration No. GJV-4311 belonged to Bhikhalal Devjibhai Prajapati and Laxmansinh Chandrasinh. The case of each of the claimants was that the deceased and other passengers boarded the bus after paying some hire. The station wagon was to go to Mount Abu. A truck was going ahead of the station wagon, the driver of the station wagon tried to overtake the same and at that time, the truck dashed the station wagon. As a result of which, the driver of the station wagon lost his balance and dashed against a tamarind tree, which led to the accident, causing death of Sureshkumar Shah and Meenaben and led to injuries to number of others. The matter was reported to the police, *panchnamas* were prepared, injured were referred to the Civil Hospital, Palanpur and thereafter, they were also referred to other hospitals and were also treated by different doctors. The claimants have submitted that the station wagon was driven rashly and negligently and as the truck also gave a dash to the vehicle, the driver, the owner and the Insurance Company of the offending truck were also answerable to make payment of the compensation amount to the claimants.

4. The learned Tribunal, after giving due opportunity to the parties to lead evidence, held that the claimants in MACP No.84 of 1979 would be entitled to an amount of Rs.40,500/- with interest @ 6% per annum, claimants of MACP No.85 of 1979 would be entitled to a sum of Rs.1,55,000/- with interest @ 6% per annum, while claimants of MACP No.86 of 1979 (Ushaben) would entitled to a sum of Rs.15,240/- with interest @ 6% per annum.

5. The Insurance Company has filed the appeals submitting, *inter alia*, that in view of the pleadings in the claim petitions that each of the occupants of the vehicle had paid some amount towards the hire, the

Insurance Company would not be answerable to meet the claim amount as the statutory defence is available to them and the driver has committed breach of the terms of the policy.

6. Shri Sarthak Vyas, learned Counsel for each of the claimants- respondents, submitted that if the learned Tribunal has found that the fact of making payment of hire or reward was not proved, then, at the instance of the Insurance Company, the said finding cannot be reviewed. He, however, submitted that assuming that the Insurance Company is not liable, then too, the claimants would be entitled to grant of their cross objections against the co-respondents.

7. Section 95(2) of the Motor Vehicles Act, 1939 provides that each motor vehicle would be compulsorily registrable and the insurance company would be obliged to cover the third party risk with limited or unlimited liability towards the passengers and it would be necessary for the Insurance Company to cover the risk for the passenger if the vehicle happens to be a private vehicle.

8. Shri Baxi, learned Counsel for the Insurance Company, referring to the pleadings of the parties, submitted that each of the claimants has submitted that they had paid hire amount to the driver of the station wagon and if that is the pleading of the parties/claimants, then, the same was not required to be proved by anybody. On the other hand, the learned Counsel for the claimants submits that loose pleadings would not adversely affect the case of the claimants.

9. In the civil matters, where the pleadings are required to be raised by the parties, a party has to plead particular facts. If the facts are undisputed, then, those would be deemed to be admitted facts. If the

facts are disputed and the Court finds that proof of the fact would have material bearing on the final outcome of the dispute, then, the Court would cast an issue on the subject and would ask the parties to prove and disprove the particular facts. In the present case, the claimants had clearly pleaded that they had paid some hire to the driver of the station wagon. It was an admission on their part. The Insurance Company did not dispute the fact and if the driver and the owners of the offending station wagon did not raise this dispute, then, the Court was not required to frame any issue and even if the driver and the owners of the offending vehicle had raised those disputes, in view of the pleadings made by the claimants, the fact that hire or reward was paid, there was no need to cast the issue.

10. The Insurance Company has sought protection under the terms of the policy, which read as under:

> "*1. The Company will indemnify the insured in the event of the accident caused by or arising out of the Motor Car against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of-*
> *(a) death of or bodily injury to any person including occupants carried in the Motor Car provided that such occupants are not carried for hire or reward, but except so far as is necessary to meet the requirements of Sec. 95 of the Motor Vehicles Act, 1939, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured. ...*"

From the said term, it would clearly appear that the Insurance Company would be obliged "to indemnify the insured in the

event of the accident caused by or arising out of the motor car against all sums including the claimant's costs and expenses which the insured shall become liable to pay in respect of the death of or bodily injury to any person including the occupants carried in the motor car provided that such occupants are not carried for hire or reward". (emphasis supplied).

11. The Insurance Company under the terms of the policy would not be answerable to the claim if the passengers are carried for hire or reward in the motor car/motor vehicle, which is for private use, then, on proof of the fact that the passengers were carried for hire or reward, the Insurance Company would be exonerated. In the present case, in view of the pleadings of the claimants that they were carried in the vehicle for hire or reward, no further proof of the fact was required. I am unable to understand the logic given by the learned Tribunal in holding that the Insurance Company's policy talks of a motor car, while the offending vehicle was a station wagon. The word "motor car" is to be understood in its generic sense and not in a hyper technical manner. If the insurance is of the motor car, then, the word "motor car" has to be understood as such vehicle, which have been insured by the Insurance Company.

12. Even if I hold that the present Insurance Company is not answerable to the claim made by the claimants and the amount so awarded by the learned Tribunal, the award made against the driver and the owner would still stand in favour of the claimants.

13. It is to be seen from the records that the claimants had filed their separate appeals. Before the appeals could be admitted for hearing, the appeals of the Insurance Company were registered, admitted and notices were issued to the claimants. The cross appeals, which could be separately registered, were registered as cross objections. Even if such

cross appeals are registered as cross objections, they would not lose their character of cross appeals and under the circumstances, the claimants would be entitled to plead, argue and pray for enhancement of the compensation amount.

14. In case of Anjuben and others, the learned Tribunal has found that the deceased, at the time of his death, was around 30 years and he was earning almost about Rs.19,000/- per year. Out of the said amount, the learned Tribunal, without any calculation, deducted a sum of Rs.4,000/- towards the income tax and also deducted a sum of Rs.5,000/- towards the personal expenditure of the deceased Sureshkumar. Nothing has come on record that what was the income tax limit and what could have been the personal expenses of the deceased. The learned Tribunal has also not taken into consideration the future prospects of Sureshkumar, who, if, at the age of 30 years, was earning something around Rs.20,000/- per year could earn more than Rs.30,000/- per year or so in the future. In a case of motor accident claims and compensation, the learned Tribunal always has to enter into the guess work. One does not know about the certainty of life, but, one would still have to see that upto what time a person would ordinarily survive. In the present case, the deceased ordinarily could survive upto the age of sixty years and could have provided help and assistance to the family for a very long time.

14.1 Taking into consideration the totality of the circumstances, I hold that the income of the deceased Sureshkumar should have been assessed at Rs.30,000/- per year, which I, accordingly, assess. Out of the said amount, I shall deduct a sum of Rs.3,000/- per year towards the tax and Rs.7,000/- per year towards the personal expenses of the deceased. After deducting these two items, the deceased could have provided an

assistance of Rs.20,000/- per year to the family. In the present case, it is also to be seen that looking to the age of the deceased, the multiplier of fifteen would have been inappropriate and the multiplier of eighteen should have been applied.

14.2 In view of the above discussion, the family of the deceased would be entitled to Rs.3,60,000/- towards the compensation plus Rs.5,000/- on account of the loss to the estate and other conventional damages, which will make the figure to be Rs.3,65,000/-. The said amount of compensation shall be paid by the respondents, driver and owners of the offending station wagon, with 6% interest per annum from the date of the claim petition upto the date of the recovery..

15. In case of the claimant, Virchand Doshi, the learned Tribunal has held that Virchand or his wife were not dependent upon their daughter, Meenaben. However, the learned Tribunal has found that Meenaben could earn Rs.400/- per month, out of which she could have spent a sum of Rs.250/- on the parents. After holding that the monetary loss would be Rs.3,000/- per year, the learned Tribunal applied the multiplier of fifteen and awarded a sum of Rs.45,000/-. The learned Tribunal deducted 50% out of it and thereafter, awarded a sum more than the amount towards the loss of company, expectancy of life and pain, shock and sufferings. In the opinion of this Court, the learned Tribunal was not entitled to deduct 50% from the total amount of the loss. However, instead of awarding some compensation towards pain, shock and sufferings, etc., the learned Tribunal should have awarded some amount towards the loss of company, etc. The amount of Rs.40,500/- is enhanced with further amount of Rs.22,500. The claimants would be entitled to recover the said amount from the driver and the two owners with 6% interest per annum from the date of the

claim petition upto the date of the recovery.

16. In case of Ushaben, it is to be seen that she had suffered 6% partial disability and she had come to the Court stating that for a period of six months, she could not do her kitchen work and from the records, it clearly appears that if she is to lift heavy articles or even other articles, then, she would suffer pain and this would be so for rest of the life. The learned Tribunal was not justified in holding that her pains and sufferings would be measured at 6% of the monthly income of Rs.300/-, that is, at the rate of Rs.18/- per month. Such calculation is illogical. In a case where the disability is partial and permanent and a person has to live with such pain and sufferings, then, such person would be entitled to better compensation. The learned Tribunal has even not awarded the expenses, which were spent by the claimant, on the ground that she comes from a rich family and for her better treatment, she was shown to a good Orthopedic Surgeon.

In the opinion of this Court, the approach of the learned Tribunal was not proper. The claimant - Ushaben would certainly be entitled to a better amount, which in lump sum, I award at Rs.30,000/-. She would be entitled to interest on the said amount at the rate of 6% per annum from the date of the claim petition till the date of recovery.

17. In view of the foregoing discussion, First Appeal Nos.788, 789 and 790 of 1983, are allowed, but, however, there shall be no order as to costs. Cross Objection Nos.15, 16 and 17 of 2007 are allowed to the extent indicated above. As none appears for the driver and the owners of the station wagon, I will not award any costs in favour of the claimants.

18. If during the pendency of this appeals or at any time, the

present claimants have recovered money from the Insurance Company, then, they would not be obliged to return the money to the Insurance Company, but, the Insurance Company would be entitled to recover the said amount from the driver and the owners of the said station wagon bearing Registration No. GJV-4311.

[R.S.Garg, J.]

*kamlesh**